2700
AF/2662
#20

Attorney Ref: 3300-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:
Ben Bacque et al.
Serial No. 09/199,786
Filed: November 25, 1998
For: CONTROLLING ATM LAYER TRANSFER CHARACTERISTICS BASED ON PHYSICAL LAYER DYNAMIC RATE ADAPTATION

Group Art Unit 2662
Examiner: Joe Logsdon

REPLY BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is directed to the new point of argument which is raised in the Examiner's Answer.

At page 10 of the Examiner's Answer in the section entitled "Response to Argument", the Examiner interprets appellants' claims as follows:

> The inventive concept of the claimed invention involves measurement of a rate. This is exactly what Meurisse et al measures. Appellants argue that the intended use is for measuring variations in rate due to actual conditions of the transmission link itself, temperature variations and/or electromagnetic interference. But this intended use is not the inventive concept itself, which is a measurement of rate.

Appellant disagrees with the Examiner's interpretation of the claims.

Appellant's claim 1 recites in part:

> ...a method of managing transmission of the data traffic through the system [as recited in the preamble], the method comprising: the steps of: monitoring the instantaneous physical layer transport rate of said transmission link....

Clearly, this is not a recitation of just any "rate" but a specific data transport rate. This is not an "intended use" but the actual measurement of a quantity. All "rates" are not created equal.

Meurisse et al seeks to preclude sources S1, S2, S3 and S4, etc. from increasing their transmission rates in a "fraudulent way". Meurisse et al's system performs the steps of:

" a. obtaining an actual packet rate of data transmitted over said connection;
b. calculating an upper packet rate value in proportion to said actual packet rate;
c. embedding said upper packet rate value in said data flow control packet; and
d. keeping said data flow rate at said source terminal below said upper packet rate value...."
(Emphasis added.)

It is not the equivalent of appellants' method even if it inherently includes the monitoring of the instantaneous physical layer transport rate of the transmission link (which it does not). Meurisse et al's queuing point "Q" generates explicit packet rate values for the three connections and return three explicit packet rate values to the respective sources S1, S3 and S4 by way of the backward channel for research management cells. (See column 6, first 10 lines.)

At column 3, lines 28-34 Meurisse et al states:

> In the present method, as long as a queuing network node is not congested, a source terminal transmitting data packets through this queuing network node can increase its transmission rate with exponential growing steps, but it no longer has the possibility to fraudulently increase its transmission rate faster, and it immediately gives free bandwidth that is no longer used.

Clearly, the Examiner has taken Meurisse et al out of context and has misinterpreted appellants' claims.

This error is in each of the Examiner's expositions regarding issues 1 - 5, and the Examiner has clearly erred and should be reversed.

Respectfully submitted,

Jim Zegeer

Jim Zegeer, Reg. No. 18,957
Attorney for Appellants

Suite 108
801 North Pitt Street
Alexandria, VA 22314
Telephone: 703-684-8333

Date: March 15, 2004

In the event this paper is deemed not timely filed, the applicant hereby petitions for an appropriate extension of time. The fee for this extension may be charged to Deposit Account No. 26-0090along with any other additional fees which may be required with respect to this paper.